

It is not understood to be denied, that a bill of exchange, or promissory note, given in consideration of another bill or note, is valid, and that in England it may be proved under a commission of bankruptcy, and where cross bills are given, and it is understood that each party shall pay his own acceptances, a holder cannot prove under a commission, any payment made on his own acceptance, there being no implied contract of indemnity, in the case of such cross acceptances. *Eden on Bankrupt Law*, 151, 152.

But the case we are now considering, has this peculiar feature, that all the makers of the cross paper on both sides have become bankrupt, and the holders of the notes given by Jones in exchange for those of Hancock and Mann, will only receive a dividend, and perhaps a very small dividend, from his estate.

Under such circumstances, to permit Jones, or his trustees, to receive dividends upon all the notes of Hancock and Mann, held by them, whether the counter notes given by him have, or have not, been paid, and before it has been ascertained what dividends the holders thereof will receive, would in my opinion be inequitable, and cannot be permitted. If Jones is to be regarded in the light of a surety of Hancock and Mann, then it is clear he could not come upon this estate, without first taking up his own notes. *Eden on Bankrupt Law*, 150. *Homer vs. Savings Bank*, 7 Conn. Rep., 478.

It seems, however, to be the practice in England in case of these cross demands, between the surety and the bankrupt, and upon which, until either has actually paid, they are substantially, only sureties of each other, to suspend the dividend, until it appears what the surety actually pays, and how far he exonerates the bankrupt estate from his own paper. *Eden*, 150.

In this case, the auditor will be directed to ascertain, and report, what amount of the paper given by Jones, in exchange for the paper of Hancock and Mann, now held by his trustees, has been paid by him, and to that extent a dividend will be allowed; and dividends on the residue, will be suspended for